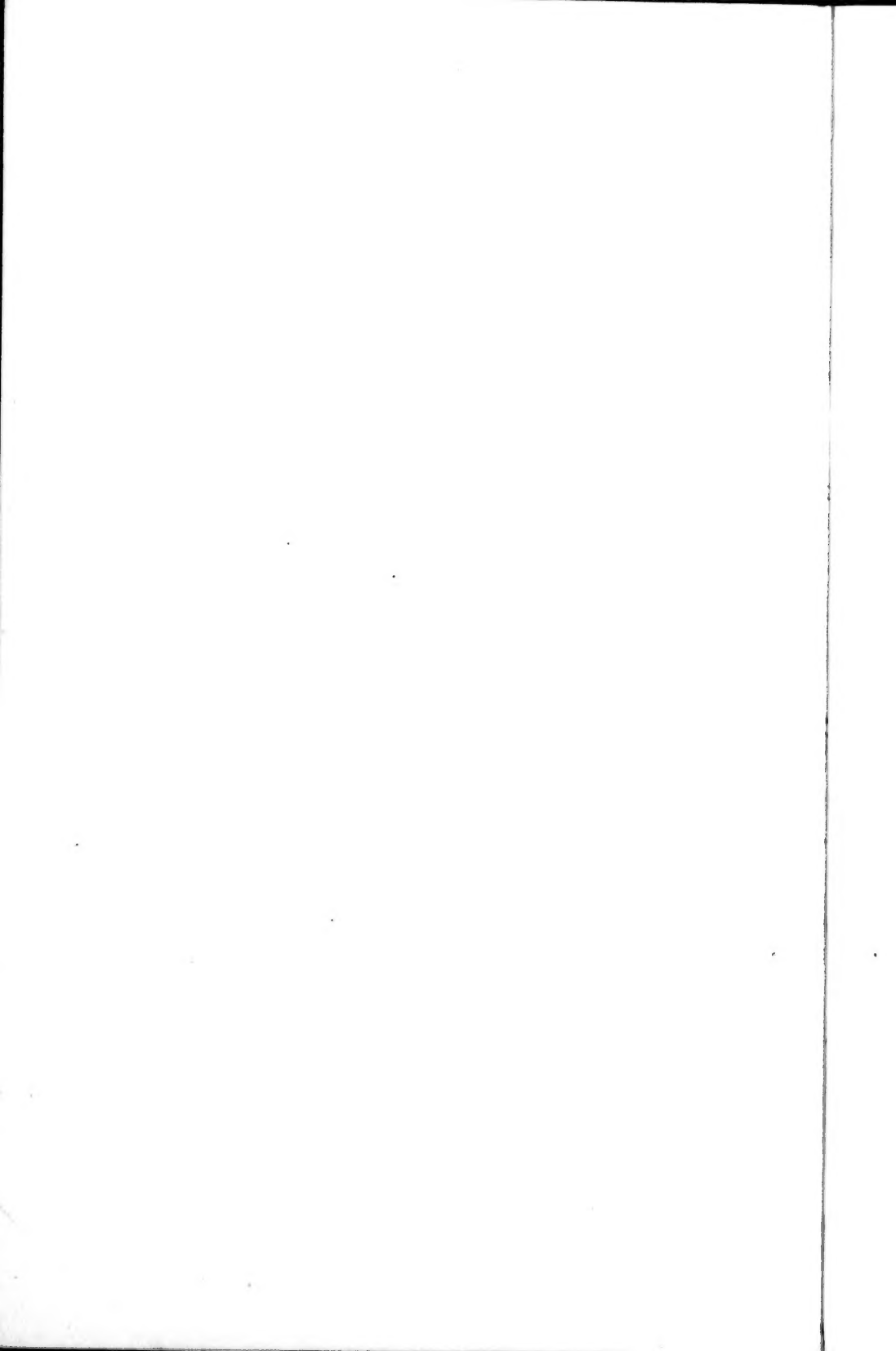




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PRACTICAL SUGGESTIONS

ON

Mining Rights and Privileges

IN

CANADA,

WITH

In Appendix containing the Gold Mining Regulations, &c.,

BY

ADOLPHUS M. HART,

BARRISTER AT LAW OF LOWER CANADA, AND COUNSELLOR AT LAW OF THE
STATE OF NEW YORK.

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*Opinion of the Hon. Wm. Badgley, Judge of the Court of Queen's  
Bench, Lower Canada.*

" I think it will be a very useful book for persons engaged in Mining operations, and will serve as a very good text book for others outside, when Mining legal operations come in their way."

~~~~~  
*Opinion of the Hon. James Smith, Judge of the Superior Court,
Lower Canada.*

" I think this book will be well received by the public, and of no small importance at the present time, when the subject of Mining Rights is likely to become interesting. The book has been carefully written, and opens up in a general way the important points likely to become useful to those engaged in Mining pursuits."

TO

SIR WILLIAM E. LOGAN, LL.D., F.R.S., F.G.S.,

DIRECTOR OF THE GEOLOGICAL SURVEY OF CANADA,

WHOSE SERVICES HAVE SO GREATLY CONTRIBUTED TO THE PROSPERITY OF
THESE PROVINCES,

THIS WORK IS RESPECTFULLY INSCRIBED BY

THE AUTHOR.

PREFACE.

THE Author obtained the information contained in the following pages while he was investigating a matter in Mining Jurisprudence, which was lately submitted to him. Believing that its publication would be interesting to the people of Canada, whose mining enterprises have become so important from their extent and value, he trusts they will judge favorably of the result of his labors. While he expresses views, which may appear novel to the owners of mineral property, and others who are interested in mining lands, they will, he hopes, be convinced of their general correctness by the authorities he has cited in support of them.

MONTREAL, May, 1867.

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PRACTICAL SUGGESTIONS

ON

Mining Rights and Privileges.

CHAPTER I.

OF PROPERTY IN MINERALS AND THE RIGHTS OF THE CROWN.

It has been a *questio vexata* among French writers on Jurisprudence, whether the Crown have a right to the product of Mines, in so far as relates to gold and silver metals. We have no interest in ascertaining what is the present state of the law of France, respecting mines and minerals, inasmuch as the general principles of the French law anterior to the conquest, or rather the erection of the Sovereign Council, in the year 1663, must prevail in the decision of any question, which may be brought under the consideration of the Courts of Lower Canada. The application of the various rules of the English law, and of the French since the Code, may be advisedly made in any argument arising out of a contest respecting mines in Canada, but they cannot be received in any other light than as the *lex scripta* of a system, which is not in force in Lower Canada, or "written reason," to which it is always useful to refer in the adjudication of disputed points in the science of jurisprudence. In matters relating to the acquisition of the precious metals, wherein the magnitude of the interests involved is so great, our Courts will no doubt

adhere with the utmost circumspection to the letter of the law, and it is the object of the author to endeavor to ascertain, what is the actual state of the law relative to such an important branch of jurisprudence.

Has the Crown a right to gold and silver mines in Canada?

Lefèvre de la Planche, in his able work on the Public Domain,* says that mines had never been regarded as belonging to the Sovereign. By the ancient Roman law, they belonged, without restriction, to the proprietor of the land wherein they were found; he might freely dispose of them like any other revenues or profits derived from his property, and he who had made the discovery could have no prétensions to the treasure, unless the mines had been found in lands which had been deserted and abandoned. This jurisprudence was changed under the Emperors, who arrogated to themselves certain rights over mineral property. Rogers, the latest authority on the law of Mines, sums up an able dissertation on the state of the Roman law in the following words:—† “The opinions of these learned authors, combined with the other authorities, lead to the conclusion that under the Civil law, in its purest times, gold, silver and other precious metals usually belonged to the State, whilst all other minerals, mines, and quarries, belonged to the owner of the soil, subject in some cases to a partial, and, in others, to a more general, control of the *fiscus*.”

In France, the Kings never laid claim to the exclusive property in mines, of which there can be no better proof than the ordinance of 1413, and that of Charles the Ninth, of the month of May, 1563,‡ by which he declared that the tenth

* Lefèvre de la Planche, *Traité du Domaine Public*, Tome iii, p. 33.

† The Law relating to Mines, Minerals, and Quarries, in Great Britain and Ireland, by Arundel Rogers, Esquire, of the Inner Temple, Barrister-at-Law. London, 1864. Page 19 *et seq.*

‡ Fontanon, vol. ii, p. 445.

part of all minerals belonged to him. In nearly all the *Edits*, *Réglemens*, and Letters Patent, recited in Isambert,* the same right is withheld, showing conclusively that the Crown did not consider that it held an absolute property in mines, but merely a regalian privilege, which had subsisted from the earliest days of the monarchy. It seems, however, that it was a controverted point among authors, in what light to consider the rights of the proprietor relatively to the Crown, or the *Seigneur haut Justicier*, to whom had been conceded certain privileges inherent in the system of the feudal tenure which then existed in France. The ordinance of Charles the Sixth was the first to settle this important matter. Its principal object was to restrain the rights of *Seigneurs haut Justiciers* against the proprietors of the soil. It allowed them to work, on paying ten per cent. as a regalian right, but not as an impost. The *réglement* of April, 1483,† was made subject to the payment of the tenth and the right of the *Seigneur Foncier*, and the Declaration of July, 1514,‡ was made subject to the charge of paying and recompensing *les Sieurs Justiciers, propriétaires et détenteurs* of the property on which mines were discovered and worked for their interests, and the damages they might sustain, “as it was established by our Ordinances on this point.” By Letters Patent of the 29th December, 1519,§ the *Seigneur*, or Lord of the Manor, was permitted to search for and work mines in his Seigniority—thus showing that the Crown did not consider the rights of the Seigneur as paramount to those of the proprietor of the soil. Merlin says, that by the law of nature mines belong to the proprietor of the soil, and in the present enlightened era of legislation it may be presumed that all

* Isambert “*Anciennes Lois Françaises*,”

† Isambert, vol. x, page 911.

‡ Idem, vol. xi, page 666.

§ Idem, vol. xii, page 171.

restrictive rights, whether by the Crown or its representatives, would be regulated, and in many respects modified, by a due regard to the interests of the owner or proprietor. The Ordinance of Charles the Ninth, and others subsequently promulgated, expressly enacted that the right to the tenth part of the mine did not only extend to mines of gold and silver, but to all mines and minerals whatsoever. By the general jurisprudence of France, coal was excluded from this reservation, and belonged to the proprietor without any restriction.

To remove all doubts on the subject, it will be observed in the Commissions of the Governors and Intendants in Canada,* granted by the French Crown, "that they were urgently enjoined to search carefully for mines of gold, silver, copper, and other metals and minerals, and to put and convert them into use," as is prescribed by our Ordinances, "reserving to them, as to the profit which was to arise from those of *gold* and *silver*, only the tenth part, and giving them, as regards others, what *might* belong to them of the rights thereto, to sustain the expenses of the Local Government." This clause is ambiguous, but nevertheless it is sufficient to show that the Crown did not lay claim to the exclusive right to gold and silver mines, but merely reserved a certain regalian right, not as an impost or duty, but as a recognition of the sovereign authority. As a manifestation of the little interest the French Government took in the mineral resources of Canada, there is to be found an *Arret* of the 8th June, 1677,† by which the King made a present to one Jean Baptiste de Lagny des Brigandières of all the mines in Canada for a period of twenty years. The legislation, however, of France, under the system of jurisprudence prevailing in Canada, has been partly superseded by the "Gold Mining

* Edits et Ordonnances, vol. iii, page 18.

† Idem, vol. ii, page 83.

Act of 1864* which has been amended in the Session of 1865.† The theory on which they seem to be based is that, when the proprietor of the soil is either unable or unwilling to work the mines, which may be discovered on his property, the Crown, from objects of public utility, may concede the right to others. This is the modern doctrine, which has met with favor in those countries, where the precious metals abound, and it is one, which is dictated by a prudential regard for the rights of the proprietors, as well as for the interests of the Government.

Respecting mines of Silver, Copper, and other metals, there is no special legislation on the subject by our Local Legislature, so that argentiferous and copper-bearing lands enter into the category of all other property, to which the ordinary rules and principles of law are applicable. Cases, however, will necessarily occur, in which exceptional rules will have to be applied to any contestation arising in our Courts out of the possession of this species of property, and it is to attempt to elucidate what these rules are, that the present labor is undertaken.

In England, apart from the claims of the Crown, the property in minerals is *prima facie* in the owner of the fee, so that a tenant could not work any mines on the leased property, without committing waste. There is no doubt the same rule would apply in Lower Canada, if the right to work any mines discovered on the property had not been granted in the lease.‡ The ordinance of 1413, referred to in Peyret-Lallier's work on the Law of Mines § establishes the right of the proprietor to all mines found on his property, subject *only* to the right of the Crown. In the matter of *lésion d'outré moitié*, a form of rescission in force in Lower Canada, before

* 27th and 28th Victoria, chapter 9.

† The Gold Mining Amendment Act of 1865.

‡ This word, peculiar to the Common Law, must apply to any form of conveyance in Lower Canada.

§ Peyret-Lallier sur la Loi des Mines. Tom. i, page 14, No. 10.

the Code was promulgated, it would, no doubt, be questionable, whether a property on which it was unknown that a mine existed at the time of the contract, would be revertible to the seller in the event of its being afterwards discovered. This might affect contracts entered into before the Code, but not since, excepting in certain cases, wherein the interests of minors are concerned.* The general principles of the Roman Law, which have been embodied in the French Law in force in Canada at the period of the Conquest, would lead to the conclusion that the parties to the deed were in ignorance of the object (the *res* of the contract) respecting which they stipulated, and that it would be voidable if a mine were afterwards found on the property. Equity would prescribe a rule, which would be held to be binding on the vendor and vendee of such a description of property. Neither the vendor nor the vendee believed, that either was selling or acquiring a mine of probably a great value, while they were bargaining respecting land, which they considered adapted only for agricultural purposes. Time and circumstances would be material elements in the consideration of this matter, which would enter largely into the merits of an adjudication in our legal tribunals.

According to the law of England, minerals found on the sea-shore, which has been defined to be the accessible space below the ordinary high water mark, *primâ facie* belong to the Crown; those between the ordinary and extreme high water mark to the owner of the land; and, in land formed by the casting up of alluvial matter, the minerals belong to the adjoining proprietor.† This rule will suffer some modification, if the matter should come up for adjudication before the Courts of Lower Canada. Boutillier‡ states the maxim

* Civil Code of Lower Canada, Arts. 991, 1001, et seq.

† Collier on the Law of Mines, England, page 4.

‡ Boutillier *Somme Rurale*, Book 1st, Tit. 72.

"Navigable rivers are royal rivers, all others belong to the *Seigneurs*." Loisel makes the same distinction: * "high roads and navigable rivers belong to the King, little rivers and roads belong to the *Seigneurs*, and the streams to the proprietor." Lefèvre de la Planchette† says, "That the King can always pretend, that the gold which is found in the bed of rivers belongs to him, and the little profit generally induces him to cede the right to those who will take the trouble of searching for it, whose success is more or less uncertain." It has been held in the Courts in Lower Canada‡ that rivers *non navigables et non flottables* are the private property of the riparian proprietors, who have consequently exclusive control over them. The Civil Code of Lower Canada, which cannot be construed to affect rights acquired prior to its promulgation, is exceedingly ambiguous on this point.§ The Seigniorial tenure having been abolished under certain reservations in this section of the Province, the sole litigants in matters relating to navigable or floatable rivers would be the Crown and the riparian proprietors, and it would depend much on the navigability or floatability of the river or stream under what category it would fall. This is a subject depending very much on the adaptability of the river for purposes of inland navigation, according to the evidence in each particular case. The question having been partly settled by the nominal appropriation by the Crown of alluvial diggings, has been divested of much of the interest which would otherwise have been attached to it, had the Gold Mining Act not been passed.||

* *Instituts*, Tome 2nd.

† *Domaine Publique*, Tome i, page 22.

‡ 10 L. C. Reports, p. 294.

§ Roads and public ways maintained by the State, navigable and floatable rivers and streams and their banks, the sea shore, lands reclaimed from the sea, ports, harbors, and roadsteads, and generally all those portions of territory which do not constitute private property are considered as being dependencies of the Crown Domain.—C. C. L. C., Art. 400.

|| C. C. L. C., Art. 420 et seq.

CHAPTER II.

OF THE MODE OF CONVEYING MINERAL LANDS.

The Provincial Statute, which has been enacted respecting Mining rights,* states in its preamble, "That doubts had arisen as to the extent of the rights of purchasers of mining claims and privileges severed from the soil," and preserves, by enregistration, the rights of prior purchasers, whose claims shall not be defeated, weakened, or injured by any subsequent sale; the enacting clause is to the following effect: "The sale, lease, or other transfer by the owner or grantee of the real property of any mining right or privilege of exploration for any mine, mineral, coal oil, or other mineral substance or quarry, with or without the power of working the mine, or right of access or egress thereto or therefrom, if duly registered, &c., shall vest the property in the purchaser," &c. The terms of the Statute being somewhat ambiguous, it will be necessary to refer to certain general principles, which will aid in its elucidation. Under the law of England, and in this both the letter and the spirit of the French law agree, it is held, that a lease of the minerals, or a grant of them, carries with it the requisite power to dig for them, all necessary rights of way over the lands of the lessor, the power to erect machinery, &c.† The equitable rules of the civil law imply, that all necessary rights are comprised in a grant, without which it would be useless to the purchaser. The Courts in Lower Canada, guided by the spirit of equity, which pervades our system of Jurisprudence, would supply any omission to render a contract practicable, which would be otherwise void. Equity, as Toullier

* 24th Victoria, chap. 31st.

† Earl of Cardigan vs. Armitage, 3 B. and C., p. 197; 3 D. and R., p. 414.

says,* is always the supplement of contracts, but he adds, "we ought not to violate agreements in endeavoring to discover a purely imaginary equity." It is on equity that are based those rules of law, which the wisdom of the Roman Jurisconsult has transmitted to us, and which are mostly the development of the precepts of divine wisdom.

Under the Roman Empire, property in minerals became not unfrequently distinct from property in the soil, and under the Code Civil of France, by the law of 21st April, 1810, property in mines was declared to be distinct from the property in the soil, which could not be explored without a concession from the Government.† In Spain, it has been held that mines were not conveyed in a grant without they were specially mentioned therein.‡ It is necessary, however, to remark that the State or the Crown in the above cases arrogated to itself the property in all mines. How it would be held in cases arising out of grants or leases between individuals would depend much on the terms of the contract and the intention of the parties. Good faith would also require that there should have been no concealment on the part of the grantee or lessee to the detriment of the owner of the mine.

In considering the mode of conveying mineral lands, it must be borne in mind—

- 1st. That in Lower Canada mines are immoveables ;
- 2nd. The buildings, machinery, pits, and works therein are such by destination ;
- 3rd. Miner's implements and utensils necessary for working the mine are also such by a fiction of law.§

* 6 Toullier, page 372, No. 338.

† Jurisprudence des Mines, par Dupont. Paris, 1862.

‡ Rogers on Mines, p. 52.

§ Peyret-Lallier, Tome i, page 173, No. 131.

Pothier and Toullier both agree in this application of the law in designating mining property as immoveables. It will therefore be necessary in conveying mining property or anything incidental thereto, to effect the transfer as in the case of immoveables; thus in any sale of moveable property, which fictively are immoveables, it will be advisable to have the sale authenticated by a written instrument, otherwise a wide door would be left open to doubt and chicanery.

In England, the most common forms in use for the conveyance of mining rights are leases and licenses to dig for minerals for a term of years. These are very different in their effects and operation. A *lease* is *exclusive* of the rights of all other persons, vesting the absolute possession of the whole of the subject matter demised or leased. A *license* to work for minerals is, on the other hand, *not exclusive* of the rights of the grantor, unless there be express words of exclusion, but he retains the right to work himself for the same minerals, or to license other persons to do so.*

It is probable that the Courts of Lower Canada would draw the same distinction as an object of public policy. Knowing that valuable mining properties are locked up in the hands of proprietors without being worked, a mere license to dig for minerals would probably be construed, as not being prohibitory of a similar right being conferred on others. It will be observed in the several Letters Patents and Declarations mentioned in Isambert,† that the French Crown, with a view to the proper development of the resources of the country, made it obligatory on the grantees to work the mines within one year, under the penalty of losing the privileges conferred on them.

Under the law of Lower Canada, the various modes by

* 1 And. R., 307.

4 Leon, 147.

Chetham vs. Williamson, 4 East Rep., 469.

† "*Anciennes Lois Françaises*."

which real estate can be alienated or conveyed may be adopted for the sale or transfer of mines, and no technical form is required as in England for the transmission of mining property.

It would, however, be advisable to shun any ambiguity in the contract by expressing the obligations of the purchaser and defining the rights of the vendor. Mines and quarries are not comprised in the *usufruct* of lands. The usufructuary may nevertheless take therefrom all the materials necessary for the repair and maintenance of these state subject to his right—under certain circumstances the usufructuary may however continue the working begun by the owner.*

In a lease, it would be better to describe accurately the portion of the land through which the right to pass and re-pass, carry and re-carry, &c., should be used or exercised; the place where buildings, sheds, &c., should be erected; use of the water, both for the washing of the ore, use of the cattle, &c., and other kindred matters, which depend on the circumstances peculiar to each contract. It would also be advisable to have the deed executed by the wife as well as the husband, in order to bar her matrimonial rights, if she have any. The product of such mines and quarries as are opened during the marriage, upon the private property of one of the consorts, does not fall into the community, but such as were opened and worked previously to the marriage, may continue to be worked for the benefit of the community.† As has been before observed, the sale of a mine would, it is likely, be construed as comprising all the necessary obligations to work the mine in good faith, for covenants are construed to run with mines on the same principle as are applicable to land, yet it would be better to state the contract in express terms, so as to avoid any difficulty.

* C. C. L. C. Art. 460.

† C. C. L. C. Art. 1274.

In compliance with the Provincial Statute, registration is necessary, so as to preserve the rights of the purchaser against subsequent grantees.

CHAPTER III.

OF THE ALIENATION OF MINING RIGHTS BY WILL OR DESCENT.

The rules, which regulate the descent, devolution and transfer of interests in lands by operation of law, and their transmission by will, apply to interests in mines with no distinction deserving of special notice.*

The English form of devising property being that, which is sometimes adopted in Lower Canada, great care should be taken in using the proper phraseology in making the bequest of mining property. The interests at stake are so considerable that the strictest construction may be placed on the clauses of a will bequeathing that species of property. All the formalities which are required for the transmission of real estate are necessary in the case of a will conveying mineral property. Under a late Provincial Statute, it may be executed before two witnesses, but the greatest circumspection should be practised in having it correctly tested, probated, and enregistered in conformity with law. It may be added that, in remote parts of the Eastern Townships of Lower Canada, where there is a considerable portion of mineral property, and it may be difficult to procure the attendance of witnesses, what is termed a holographic will, viz., one which is entirely *written, dated, and signed* by the testator, will be as efficient as if it were executed before witnesses.

Regarding the law of descent, relating to mining property, it is the same as that which relates to all other immoveable property, and needs no special notice here.

* Collier on the Law of Mines, page 55.

CHAPTER IV.

OF THE RIGHTS BELONGING TO THE OWNERS OF MINES, THE
INJURIES THEY MAY SUSTAIN, AND THEIR REMEDIES.

The first rule which Pothier lays down for the interpretation of contracts* is, that we must endeavor to discover what is the common intention of the contracting parties, rather than the grammatical sense of the terms used, and in another he says, that when a clause is susceptible of two meanings, it ought to have that ascribed to it, which would give it some effect, rather than that from which it would have none at all. In the absence of any special legislation on the subject of mines, it will be necessary in the construction and interpretation of mining contracts to pay rigid attention to the equitable rules of the civil law, rather than the close and oft-times turgid reasoning of the English judges and lawyers on the technicalities of the common law, both in the redaction and interpretation of mining contracts.

With these remarks, we shall now proceed to inquire what are the ordinary rights of the owner and grantee of mining property, the wrongs to which he may be exposed, and the remedies he may have to redress them.

It may be stated as a general proposition, that the right to obtain minerals, whether by the owner or lessee, comprises the right to do all that is necessary towards the convenient working of them. (*Cuicunque aliquid conceditur etiam et id sine quo res ipsa non esse potuit*).† It has been held in England as a rule of law,‡ that “the grant of a thing carries

* 1st. Pothier Obligations, page 43, sec. 91.

† Shepherd's Touchstone, page 89.

‡ 1. Saunder's Reports', page 322.

all things, without which the thing granted could not be had," but that this only applies to things incident and directly necessary. In Lower Canada, under the practical application of the principles of the civil law, the right to mine on another man's land, would imply the right to use all that is necessary to completely fulfil the conditions of the contract. Thus in England, it would depend on the terms of the mining lease, whether the lessee would have the right to use a stream of water on the land leased for washing the ore. In Lower Canada, good faith on the part of the grantor or lessor would require, that the use should follow the grant, provided it did no injury to him. Various other cases might arise in which the law of mining, as laid down in England, would be tempered by the more equitable spirit of the system in force here.

For instance, public policy in a new country would induce both Legislators and Judges to enact or construe laws in a sense, which would tend to the development of its mineral resources. Delebecque* mentions several *arrets* or ordinances of France, which made it compulsory on grantees of mining lands to work them themselves, or cede the privilege to others. The principle, which was embodied in the celebrated *Regalian* law, and which was confirmed by the edict of the 15th September, 1557, was then in active operation, and the Crown had a direct interest in the working of mines, from which it derived a considerable profit.

It has been decided in England that the grant of minerals, with the usual powers to dig shafts, erect machinery, &c., for the effectual and convenient mining and working of them, would extend only to the processes necessary for making them marketable, and not without express mention to those of smelting.†

**Traité sur la Legislation des Mines*, vol. i, page 252.

† *Sampson vs. Easterly*, 9 B. & C., 505.

Both the owner and the lessee are bound to use the greatest caution in digging shafts, so as not to interfere with the rights of the adjoining proprietors.* If he commit any negligence, whereby they are injured, he renders himself liable to an action for the wrong. He should be particularly careful, when the working of the mine is near the boundary line of his neighbor's property, for he has no right to impair the use of the adjoining land, although he is working within his own limits. These matters have given rise to a great deal of litigation in the English Courts, and cannot be too sedulously avoided.†

In the excitement, which immediately ensued, on the discovery of valuable deposits of copper, and other metallic substances, in the Eastern Townships of Lower Canada, many of the metalliferous lands were, in the nomenclature in use at the time, *bonded*, or rather in most cases permission was granted to search for, and if discovered, to work mines. These bonds were couched in different terms, and comprised clauses, which varied from each other. It is impossible to lay down rules, which would meet every case that may arise, but a knowledge of the general rights of the proprietor of the land, who has conceded mining privileges, will no doubt be advantageous.

What is familiarly called "Royalty" among miners in this country, goes under the appellation of dues or duty ore in England. An action of covenant may be brought for the breach of a covenant under seal, or of special assumpsit for the non-rendering of dues, according to an agreement not under seal. Rogers says,‡ "the Court of Chancery will decree specific performance of an agreement for the purchase of any interest in a mine, and for carrying into effect any

* Peyret-Lallier, vol. i, p. 549, No. 442.

Desgodets, *Lois des Batimens*.

† Rogers on the Law of Mines, Chapter XVII.

‡ Rogers on Mines Edit, 1864, page 273.

other agreement, which can be *fairly executed*, as well as give relief against an arbitrary exercise of powers reserved to a grantor; but no specific performance will be decreed of any contract, which is ambiguous in its terms; or where the subject matter has undergone such an alteration, that it cannot be given to the claimant, if a decree were made.”* He adds, the remedy in such cases will be at law to recover damages, and cites several cases to show that relief is afforded in Courts of law, where equity cannot intervene.†

The matter can suffer no difficulty when the mine is worked, but supposing there should be a mine of great value on the property, which the grantee does not for certain reasons choose to work, what recourse has the owner to whom dues are owing, to compel him to work it? The rule in England, as above stated, is plain and simple, the grantee is bound to work the mine, as long as it is fairly workable.‡ However small may be the profits derived from the working of the mine, he would be obliged to work it, for he can only attribute to himself the making of a contract, which has not turned out beneficial to him. The owner would have an equitable remedy to compel him to work the mine or to rescind the deed, and pay all damages. A great deal would no doubt depend on the intention of the contracting parties to be discerned from the wording of the deed, but the maxim of the Civil Law would prevail, (*melior est ut valeat quam ut pereat*), and the Courts would decree a performance, when it could be conveniently done. The public policy and necessities of an unexplored country would lead to a ruling by the Courts favorable to the speedy development of its mineral resources.

* *Meynell vs. Surtees*, 25 L. J., Chancery 257.

Flint vs. Brandon, 8 Vesey, Rep. 159.

Carne vs. Mitchell, 15 L. J., Ch. 287.

Nelson vs. Bridges, 2 Beav., 239.

† Rogers on Mines, page 274.

‡ 7 C. & P., 346.

Bainbridge* says, "questions of this nature are of course "properly for the consideration of a Judge; but if there be "any fraudulent delay on the part of the lessee, the Court "of Chancery will interfere, and order him to pay the rent "or dues, which would have accrued, if the mine had been "properly worked."

In Lower Canada, the application of the rules of the English Courts would even be more extended; a great deal would depend on the intention of the parties as discernible from the wording of the agreement, but the law would prescribe that the grantee should work the mine in good faith, if it can be worked with any, even the slightest profit. The words of the civilians are *in pari casu*, that he has to reproach himself in making a bargain, which he cannot perform, or which has turned out disadvantageously to him.

Peyret-Lallier,† whose work is partly based on the principles and practice enunciated in the old Jurisprudence (*l'ancienne Jurisprudence*), seems to be clearly of opinion that the same doctrine prevailed in the French law, and in a chapter ‡ devoted to the consideration of what actions at law are competent to be exercised by the owner of the land, says that he has an action against the grantee (*propriétaire exploitant*), for the delivery of the duty ore (*droit*), to be allowed him from the product of the mine. He adds, that the *redevance* or dues owing to the proprietor of the land is a realty, (*droit réel*), and cites Proudhon, § as corroborating his opinion. The latter regards it also as a ground rent, (*rente foncière*), and adds, that according to the principles of the old French law, the dues follow the land, into whosoever hands it may fall. He cites Loyseau, || Pothier, ¶

* Bainbridge on the Law of Mines, page 159.

† Legislation des Mines, vol. i, page 106. Paris, 1844.

‡ Page 98, No. 77.

§ Proudhon, Nos. 308 & 780.

|| Loyseau de la distinction des Rentes, Liv. i, ch. 4.

¶ Pothier, Bail a Rente, No. 88.

Toullier, Merlin, and others, who commented on the 99th article of the Custom of Paris. It being a *redevance* or real charge on the property, it gives rise to a mixed action against the grantee, * the nature of which is explained in Pothier. The law would therefore, according to the foregoing authorities, give the proprietor a right of action against the grantee or lessee, viz: to compel him to perform the covenants he has entered into, to work the mine in good faith, or to rescind the deed, and for the damages which have necessarily arisen from the non-user; and secondly, should the mine be worked it would give him a personal action against the grantee, for the payment of the dues.

Fraud vitiates all contracts. If the vendor make false representations to the purchaser with respect to the advantages of an investment, it will amount to fraud, and the purchaser may be relieved in equity by a decree for setting aside the contract.† Under the law of Lower Canada it would undoubtedly be held, that false representations would nullify the contract. *Quere*—would the concealment of the fact of there being a mine on the land sold have the same effect?‡ In England concealment does not vitiate the sale. Our system of Jurisprudence is, moreover, founded on good faith, which militates against all collusion and fraud in the execution of contracts.

* *Idem de Sociétés*. No. 194, 2nd partie.

† Bainbridge on Mines, page 423.

Rogers, ch. xiv, sec. 1, p. 273.

‡ Vide ch. i.

CHAPTER V.

WHAT THE GRANT OR LEASE OF MINING LANDS SHOULD
CONTAIN, SPECIAL COVENANTS, &c.

It will be observed from the tenor of the preceding remarks that in Lower Canada no particular form is required for the sale or lease of mining rights. In this contract, as in all others, the Court will enforce the execution of the deed according to the manifest intention of the parties from the terms of the agreement between them. To avoid, however, the necessity of resorting to the Courts of Law for the interpretation of contracts, it is advisable to express plainly on the face of the deed the obligations of the purchaser and the rights of the owner of the land. This will obviate a great deal of expense and trouble. The following suggestions may not be considered misplaced. They apply to both sections of the Province, and should receive the strictest attention in the preparation of contracts of this nature.

1st. A grant or lease should, after properly describing the parties by their names and addition, proceed to grant or demise the subject of contract. It should cover either the whole land or certain bounds for the working of any lodes or veins, either known or supposed to exist, without prejudice to the rights of the owner to use the land for farming purposes.

2nd. To work the mines, smelt the ores, erect washing and smelting apparatus, put up sheds, &c., &c.

3rd. To enter, dig shafts and pits, drive levels, make water-gates and aqueducts for draining the mines, erect engines and machinery for obtaining the minerals or for protecting them when they are in his possession. *

4th. To stipulate particularly the rights of way, and on what part of the land it is to be exercised.

5th. To particularize the right to cut timber off the land.

6th. The reservation of the royalty or duty ore, and to define accurately the quantity, quality, time and mode of delivery, whether it is to be washed by the grantee or not, or delivered in its natural state.

7th. The dues may be paid in money, for if it be in metal it is an exception to the thing sold.

8th. To hold in view the possibility of the discovery of other metals than the particular one respecting which the agreement is made.

9th. To allow the owner or lessor to inspect the works, and, in case the mines are not worked in a proper manner, to give such satisfaction and damages to the lessor as shall be decided by arbitration.

10th. To provide proper books and accounts of the quantity produced, to be at all times open to inspection and to furnish copies and extracts from them.

11th. If the lease be determinable at a given period, to give the lessor the option of purchasing the tools, materials and machinery at a fair valuation or by arbitration.

These covenants may be modified or altered to suit the views of the contracting parties, but they should not be disregarded in the execution of mining contracts.

In licenses to dig for minerals and to work them, if found, the right of the grantor and others to work them also, should be distinctly reserved, although, as it has been before stated, the license differing from a lease, would imply the retention of that right, unless there be an express exclusion of it.

CHAPTER VI

OF JOINT STOCK ASSOCIATIONS AND ACTS OF INCORPORATION.

It would be beyond the scope of this short treatise on the relative rights of the owner and grantee of mining lands, to offer any remarks on the powers granted to Joint Stock Companies and Mining partnerships. The Act respecting Mining Companies * confers certain rights relating to tramways, macadamized roads, &c., to which it may be necessary to refer, when a Mining Company is being organized. Any dissertation on the subject of these Associations would be sufficiently comprehensive to form a separate work in itself. It will be sufficient to refer to the Joint Stock Companies Act of 1859† as amended by subsequent Statutes‡ under which mining companies can be formed. Besides the general authorization (under certain conditions and formalities to be observed by applicants), which is conferred by this Statute, to form companies for mining purposes, there were no less than fifteen acts of incorporation granted to private companies in this section of the Province in the session of the Provincial Legislature, held in 1863, and thirty-five in that of 1864. The "Limited Liability Clause" is found in all these private acts of incorporation. These vary from each other in several important particulars, although they agree in the cardinal points of mining legislation. The Commissioners of the Civil Code for Lower Canada have declared § "that these Joint Stock Companies are governed by the rules common to other partnerships, when these are not inconsistent with the rules prescribed by them and with the laws and usages specially applicable in commercial matters," and add|| that "when they

* Consolidated Statutes of Canada, chap. 64.

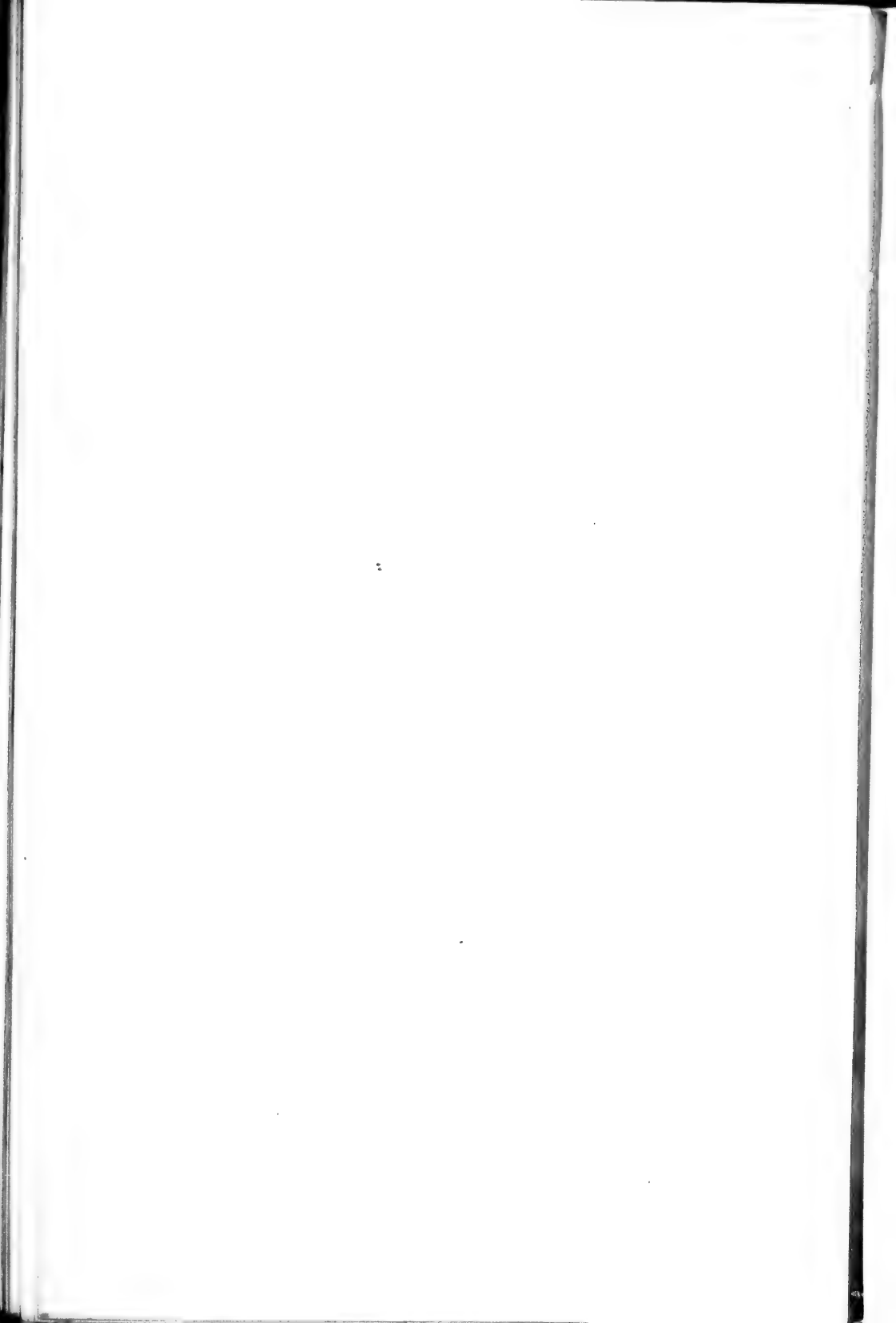
† 22nd Victoria, chapter 63.

‡ 23rd Victoria, chapter 80. 24th Victoria, chapter 19.

§ Civil Code of Lower Canada, Book 3, page 46.

|| Idem, page 52.

are formed by an Act of the Legislature, they are governed by its provisions." Notwithstanding the limited liability clause, which is to be found in each of these acts of incorporation, and which, in some cases, is as follows:—"The share-holders of the Company shall not, as such, be held responsible for any act, default or liability whatsoever of the Company, or for any engagement, claim, payment, loss, injury, transaction, matter, or thing whatsoever, relating to or connected with the Company beyond the amount unpaid upon their shares in the stock thereof," the Company would not be relieved from the obligation of working the mines, which they may have acquired, subject to the royalty or duty ore, which may be payable to the owner. If the mine be workable, the Company would be bound to work it, like any other private grantee, and if any fraud be practised for the purpose of evading its obligations, it is probable that the Courts would intervene to enforce the execution of the contract as in all other cases. In a country, the wealth of which depends on the availability of its mineral resources, it should be the policy of the Legislature and the Judiciary so to enact or interpret laws, that the public interests may be subserved rather than thwarted by their operation.



C A P. I X.

An Act respecting Gold Mines.

[Assented to 30th June, 1894.]

WHEREAS Gold has been discovered in this Province; and whereas it is expedient that provision should be made respecting the development and production thereof, and for the working of mines of the same: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. In the construction and for the purposes of this Act, and of all Orders in Council or Regulations under it, if not inconsistent with the context or subject matter, the following terms shall have the respective meanings hereby assigned to them, that is to say:

First. The verb "mine" and the participle "mining" shall be held to mean and include any mode or method of working whatsoever whereby the soil or earth, or any rock or stone may be disturbed, removed, carted, carried, washed, sifted, smelted, refined, crushed or otherwise dealt with for the purpose of obtaining gold, whether the same may have been previously disturbed or not;

Secondly. The word "Gold" shall be held to mean and include as well any gold as any earth, clay, quartz, stone, mineral or other substance containing gold or having gold mixed therein, or set apart for the purpose of extracting gold therefrom;

Thirdly. The words "Quartz mines" shall be held to mean and include all auriferous rocks containing gold;

Fourthly. The words "Alluvial mines," shall be held to mean and include all soils or strata containing gold; and the word "mines," shall include both quartz mines and alluvial mines and all other gold mines whatsoever, and all places where the work of "mining," as above defined, may be carried on;

Fifthly. The word "proprietor," shall be held to mean and include the person or persons for the time being entitled to the rents,

issues and profits of the land, or the person who is the owner of the mining rights and gold found on the land on which any "mining" may be going on ;

Sixthly. The words " Gold Mining Division," shall be held to mean and include any tract of country declared to be a " Gold Mining Division," under this Act ;

Seventhly. The words " Crown Lands," shall be held to mean and include all Crown Lands, Ordnance Lands (transferred to the Province), School Lands, Clergy Lands, or lands of the Jesuits' Estates, Crown Domain or Seignior of Lauzon, which have not been alienated by the Crown ;

Eighthly. The words " Private Lands," shall be held to include all lands which have been alienated by the Crown ;

Ninthly. The word " claim," shall be held to mean a parcel of land taken possession of under this Act for mining purposes ;

Tenthly. The words " party-wall," shall be held to mean a bank of earth or rock left between two excavations ;

Eleventhly. The words " Mill License," shall be held to mean a license to use machinery for the purpose of extracting gold from rock ;

Twelfthly. The words " Licensed Mills," shall be held to mean mills and machines so licensed, and the words " Licensed Mill Owner," the person to whom any such license has been granted ;

Thirteenthly. The word " Licensee," shall be held to mean a person holding a license ;

Fourteenthly. All measurements and distances under this act shall be made and taken to be according to English measurement.

2. The Governor in Council, may from time to time, by Order in Council, declare such tract of country as may be described in and by such Order in Council a " Gold Mining Division " ; and by any other subsequent Order or Orders in Council from time to time, may extend, add to or diminish the limits of such division, or may otherwise amend, or may cancel, such Order in Council ; and from and after the publication in the *Canada Gazette* of any such Order in Council, the Gold Mining Division therein men-

tioned and described, and the gold mines, quartz mines and alluvial mines, situate in such Division, shall be subject to the provisions of this Act, and to any regulations to be made under this Act.

3. The Governor may appoint such Officer or Officers as he shall deem necessary for the purposes of this Act, who shall respectively be under the direction of the Commissioner of Crown Lands, and by Order in Council may prescribe their duties and fix their titles and salaries; and they shall be *ex officio* Justices of the Peace of the District or Districts which a Gold Mining Division may comprehend or include, in whole or in part, or in which, or in any portion of which, a Gold Mining Division may lie; and it shall not be necessary that any such Officer shall possess any property qualification whatever in order to enable him lawfully to act as such Justice of the Peace; and every such Officer shall have jurisdiction as a Justice of the Peace over all the territory comprised within the Division for which he may be appointed, with power to settle summarily all disputes as to extent or boundary of claims, use of water, access thereto, damage by licensees to others, forfeiture of licenses, and generally to settle all difficulties, matters or questions, which may arise under this Act, or offences against any of the provisions of this Act, or the regulations to be made under it; and the decision of any such Officer, in all cases under this Act, shall be final, except when otherwise provided by this Act or when another tribunal is appointed under the authority of this Act; and no case under this Act shall be removed into any Court by Writ of *Certiorari*.

4. From and after the publication of any such Order in Council as aforesaid in the *Canada Gazette*, it shall not be lawful for any person to mine for Gold either for himself or any other person within the Division therein defined, and thereby constituted a Gold Mining Division, except under a "*Crown Lands Gold License*," or a "*Private Lands Gold License*," as provided by this Act.

5. Any person found mining within any Gold Mining Division, without a license as aforesaid or upon private lands against the will of the proprietor thereof or without such license, shall, upon conviction before the Officer for the Division, forfeit and pay a sum not exceeding five dollars and costs; and in default of payment of such fine and costs he may be imprisoned for any period not exceeding one month; Provided always, that no license fee shall be exacted for exploring for gold until the precious metal be discovered.

6. Every licensee will be held and required to produce and ex-

hibit his license to the Officer for the Division, and to prove, to the satisfaction of the Officer, that such license is in force whenever required to do so by him; and the Officer for any Gold Mining Division shall have the right to enter upon private lands, within such Division, for the purposes of this Act.

7. For the purposes of this Act there shall be two descriptions of license, neither of which shall be transferable; one to be called the "*Crown Lands Gold License*" and the other the "*Private Lands Gold License*;" each of such licenses shall contain the name of the licensee; but it shall be lawful for any proprietor of a lot of land to take out a license for each miner working upon his land, in the name of such miner, which license shall be good for the period therein mentioned, for the purpose of authorizing such miner to mine as aforesaid.

8. A "*Crown Lands Gold License*" shall authorize the person therein named to mine, during one month or more from the date therein named on any unsold Crown Lands within the Gold Mining Division mentioned in such license; and for every such license a fee of two dollars per month shall be paid.

9. A "*Private Lands Gold License*" shall authorize the person therein named to mine during one month or more from the date therein named on private lands, within the Gold Mining Division mentioned in such license, but only by and with the consent of the proprietor of such lands, by such licensee first had and obtained, and to the limit or extent agreed upon between such licensee and proprietor; and for every such license a fee of one dollar per month shall be paid.

10. Each Crown Lands Gold Licensee shall have the right to stake out one claim on unoccupied Crown Lands within the Division (by planting a wooden picket at each of the four corners thereof,) and to work the same.

11. Each claim shall be of one of the following dimensions, viz:

FOR ALLUVIAL MINES.

If on any river or large creek, twenty feet front by fifty feet to the rear, to be measured from the water's edge.

If on a small creek or minor stream, forty feet front by fifty feet to the rear, to be measured from the centre of the stream.

If in a gully, sixty feet along said gully and to extend from hill to hill,

If on a surface or hill side digging, sixty feet square. Except where a Company intend to hill-tunnel, then, upon application, the Officer for the Division may grant such larger claim as he may think fit.

And for working a bed of river the Officer shall determine as circumstances may require the size and position of claims; and all side lines shall be drawn as nearly as possible at right angles to the general course of the stream, for half a mile on each side of the claim where such side lines touch the stream.

FOR QUARTZ MINES.

For any one person one hundred feet along a lead, by one hundred feet on each side thereof, measuring from the centre of the lead.

Companies of two or more persons may stake out and work additional feet along a lead by the above width in the proportion of twenty-five additional feet in length for every additional miner, not to exceed five hundred feet in length altogether, and work the claim jointly.

12. The Officer for the Division shall decide as to each claim under which of the heads in the next preceding section it shall be classed; and his decision shall be final.

13. Claims shall be laid out as far as possible uniformly and in quadrilateral and rectangular shapes; measurements of all claims shall be horizontal; and the ground included in every claim shall be deemed to be bounded under the surface by lines vertical to the horizon.

14. Licensees having so staked out their claims on Crown Lands shall not have the right to a continued occupation of such claims unless they work the same continuously, and without intermission for a longer period than one week, nor unless they comply with the requirements of this Act, and the regulations to be made under it, and regularly renew their Licenses.

15. No person shall occupy at the same time more than one claim on Crown Lands, except in the cases hereinafter provided. for of registration of claims rendered temporarily unworkable.

16. The discoverer of any new mine shall be entitled to a license free of fees for twelve months, for one claim of the largest area prescribed by this Act or by any regulation which may be issued under it and in force when such discovery may be made; Provided that such discovery shall have been immediately reported in writing to the officer of the Division; and any one not immediately reporting such a discovery shall not be allowed to mine on any Crown Lands for one year.

17. No person shall be considered the discoverer of a new quartz mine, unless the place of the alleged discovery shall be distant, if on a known lead, at least three miles from the nearest known mine on the same lead, and if not on a known lead at least one mile at right angles from the course of the lead; if in alluvial workings, at least two miles distant from any previously discovered mine.

18. A party wall of at least three feet thick shall be left between each holding on Crown Lands, which said party wall shall be used in common by all parties as a mode of access to the stream, where one exists; and such party wall shall not be obstructed by any person or persons throwing soil, stones or other material thereon; and every person or persons so obstructing such party wall, shall, upon conviction before the Officer for the Division, be liable to a fine of not more than five dollars, and costs; and in default of payment of such fine and costs he may be imprisoned for any period not more than one month.

19. If at any time it shall be found necessary or expedient to remove a party wall as aforesaid, the party so removing it shall, if required so to do, construct a new mode of access to the water in no wise more difficult as an approach than the one destroyed by the removal of the party wall, under a like penalty as provided in the next preceding section; and in case of a removal of a party wall the gold found therein shall belong to the owners of the adjoining claims, each of whom shall own the half next to his claim.

20. No person mining upon any Crown Lands shall cause any damage or injury to the holder of any other claim than his own, by throwing earth, clay, stones or other material upon such other claim, or by causing or allowing any water which may be pumped or bailed or may flow from his own claim to flow into or upon such other claim, under a penalty of not more than five dollars, and costs; and in default of payment of such fine and costs, he may be imprisoned for any period not more than one month.

21. Claims on Crown Lands fronting on streams shall be subject to the general use of the waters of such streams, in a manner to be regulated by the Officer for the Division.

22. Any person occupying a claim on Crown Lands which in consequence of excess of water or other unavoidable reasons cannot then be worked, may, upon payment of one dollar, register his right to such claim in the Office of the Officer for the Division, in a book to be kept for that purpose, and may then proceed to work elsewhere; but in case such person do not return and occupy the claim so registered within one week after the surrounding claim or claims have been shown to be workable, he shall forfeit all right and title to said claim; provided that every person so registering a claim shall be held to plant a wooden picket, in the centre thereof or as near the centre thereof as possible, upon which shall be cut or painted, in legible figures, the registration number of said claim.

23. Any person found removing or disturbing with intent to remove, any stake or picket placed under the provisions of this Act, shall forfeit and pay a sum not exceeding ten dollars and costs, and in default of payment of such fine and costs, may be imprisoned for any period not exceeding one month.

24. Every person holding a gold mining license shall upon renewing the same and to entitle himself to a renewal, make a full and true statement, upon the expiring license or otherwise, to the proper Officer, upon oath, of the labor performed and gold obtained by him during the term of such license.

25. From and after the passing of this Act it shall not be lawful for any person or persons to use or employ any mill or machinery (other than mills or machinery worked by hand) within or near any Gold Mining Division for the crushing or reduction of quartz, or the obtaining of the gold therefrom by crushing, stamping, amalgamating, or otherwise, without a license therefor first had and obtained from the Officer of the Division, which shall be good for one month or more, and for which he shall pay a fee of five dollars per month; and every person convicted of any contravention of any one of the provisions of this section shall, for every day on which such contravention shall have occurred or been continued, forfeit and pay a sum not exceeding one hundred dollars, and costs; and in default of payment of such fine and costs he may be imprisoned for any period not more than two months.

26. Every licensed mill owner shall keep a book or books of account, in which book or books shall be entered a clear and distinct statement of all quartz crushed, amalgamated or reduced at the mill of such licensed mill owner, and the following particulars in respect of the same :

First.—The name of the owner or owners of each distinct parcel or lot of quartz crushed ;

Second.—The weight of each such parcel or lot ;

Third.—The date of the crushing of the same ;

Fourth.—The actual yield in weight of gold from each such parcel or lot ;

Fifth.—The number or numbers of the license or licenses of the licensee or licensees by whom said claim was worked.

And every such mill owner shall furnish monthly, to the Officer for the Division, a return on oath, compiled from such book or books and containing statements and particulars as aforesaid, for each and every day during the month then last past, together with such other information as such Officer or the Governor in Council may require ; and for every day on which any such Licensed Mill Owner omits to enter any such statement, or any particular or particulars as aforesaid, or delays to furnish such return when due, he shall forfeit and pay a sum of not more than twenty dollars, and costs ; and in default of payment of such fine and costs he may be imprisoned for any period not more than one month.

27. Nothing in this Act shall be held or construed to mean that parties searching for, digging or removing Gold from lands adjoining any Gold Mining Division, shall not be subject to the provisions of this Act, as if their operations were carried on within such Gold Mining Division.

28. No person shall sell or barter any wine, beer, or other spirituous liquor within one mile of any place where Gold Mining is being prosecuted without a monthly Tavern License from the Officer for the Division, paying for the same a fee of five dollars ; and such Tavern shall be under the supervision of such Officer, who may rescind such license, should the Tavern not be conducted in an orderly and proper manner ; and any person who shall so

sell or barter any wine, beer, or other spirituous liquor as aforesaid, without first obtaining such license, shall, upon conviction before the Officer for the Division or a Justice of the Peace, forfeit and pay for every such offence, a fine of not more than one hundred dollars, and costs; and in default of payment of such fine and costs, he may be imprisoned for any period not more than two months, and he shall, moreover, forfeit all wine, beer and other spirituous liquor found in his possession in such Tavern.

29. No person shall receive a Tavern License under this Act without producing to the Officer for the Division, a Tavern License in his favor issued by the Collector of Inland Revenue for the Revenue Division in which the hotel, tavern, house, vessel or place to which the license he seeks for under this Act is to apply, shall be situate, and then in force and to be in force for and during the month for which he seeks for a license under this Act.

30. Each Officer appointed in and for a Gold Mining Division under this Act, may appoint any number of Constables not exceeding four; and the persons so from time to time appointed shall be and they are hereby constituted respectively Constables and Peace Officers for the purposes of this Act, for and during the terms and within the Gold Mining Divisions for which they may be appointed respectively.

31. The Governor may, from time to time, appoint any policemen or police force in and for any Gold Mining Division or Gold Mining Divisions, in number not exceeding one hundred in the whole; and may make regulations for the management, discipline and pay of such force;—and the policemen or members of the police force so appointed, shall have all the powers, authorities and immunities of Constables and Peace Officers, and such additional powers and authorities as the Governor in Council may confer on them; and they may be employed in such duties as the Governor in Council may, from time to time determine.

32. The Governor in Council may, as often as occasion requires, declare by Proclamation that he deems it necessary that the Act "respecting Riots near Public Works," being chapter twenty-nine of the Consolidated Statutes of Canada, should, so far as the provisions therein are applicable, be in force within a Gold Mining Division or Gold Mining Divisions; and upon, from and after the day to be named in any such Proclamation, the said Act shall, so far as the provisions thereof can be applied therein, take effect within the Gold Mining Division or Gold Mining Divisions designated in

such Proclamation, and the provisions of the said Act shall apply to all persons employed in any mine, or in mining, within the limits of such Gold Mining Division or Gold Mining Divisions, as fully and effectually to all intents and purposes as if persons so employed had been specially mentioned and referred to in the said Act:

2. And the Governor in Council may, in like manner, from time to time, declare the said Act to be no longer in force in such Gold Mining Division or Gold Mining Divisions; but this shall not prevent the Governor in Council from again declaring the same to be in force in any such Gold Mining Division or Gold Mining Divisions;

3. But no such Proclamation shall have effect within the limits of any City;

4. For the purposes of this and the two last proceeding sections each separate extent of ground, area or territory mentioned in any Letters Patent under the Great Seal of this Province whereby Her Majesty's Royal permission and authority to make researches for and dig and work gold, or gold mines has been given and granted to any person or persons, may be held and deemed to be a Gold Mining Division or for such purposes may be included in any existing Gold Mining Division.

33. Every person who has, at any time before the passing of this Act, by himself or herself, or by any other person or persons, made researches for and dug and worked gold, gold ore or gold mines, in any part of this Province under or by virtue of any such Letters Patent as aforesaid, shall, within two months from and after the passing of this Act, furnish to the Commissioner of Crown Lands a full, true and detailed account, verified on oath, showing the gross quantity of gold extracted or collected, or caused to be extracted or collected within the extent of ground, area or territory described in such Letters Patent in each and every year since the date of the said Letters Patent, and shall within six months pay to such officer the proportion of such gross quantity of gold due by such person to Her Majesty according to the terms and conditions of such Letters Patent, or the equivalent thereof in money at the then market rate of gold in this Province, as the said Commissioners shall then and there elect; and for every day during which any such person shall neglect or delay, after the expiration of either of the said terms, to furnish such account and pay such proportion or its equivalent as aforesaid, he or she shall

incur a fine of five dollars; and nothing herein contained shall interfere with existing rights or remedies of the Crown; and nothing in this act contained shall be construed into an acknowledgment that any such Letters Patent were legally issued, or that they have not been forfeited.

34. Every person who shall, at any time after the passing of this Act, by himself or herself, or by any other person or persons, make researches for and dig and work gold, gold ore or gold mines in any part of this Province under or by virtue of any such Letters Patent as aforesaid, shall, on the last day of each month in which he or she has by himself or herself or by any other person or persons as aforesaid made researches for, dug or worked gold, gold ore or gold mines within the extent of ground, area or territory described in such Letters Patent, furnish to the Commissioner of Crown Lands a full, true and detailed account, verified on oath, shewing the gross quantity of gold extracted or collected or caused to be extracted or collected by such person within such extent of ground, area or territory during such month, and shall at the same time pay the proportion of such gross quantity of gold due by such person to Her Majesty according to the terms and conditions of such Letters Patent, or the equivalent thereof in money at the then market rate of gold in this Province, as the said Commissioner shall then and there elect; and for every day on or during which any such person shall neglect or delay to comply with the requirements of this section he or she shall incur a fine of twenty dollars; and nothing herein contained shall in any wise interfere with the existing rights or remedies of the Crown for the non-performance of any of the conditions or stipulations contained in any such Letters Patent.

35. The Governor in Council may from time to time make all and every such regulation and regulations as he may deem necessary or expedient, for diminishing or increasing the size or altering the form of claims, for prescribing the conditions and terms of licenses, and for fixing, diminishing or increasing the license fees chargeable under this Act, for the appointment of Arbitrators or Mining Boards to hear and determine appeals from the decisions of Gold Mining Officers, and for the prescribing, defining and establishing the powers, duties and mode of procedure of such Arbitrators or Mining Boards; for the construction and maintenance of roads through the Gold Mining Divisions, and generally for the purpose of carrying out this Act; and such regulations, after publication in the *Canada Gazette*, shall have the force and effect of law.

36. Every person contravening this Act, or any rule or regulation made under it, in any case where no other penalty or

punishment is imposed, shall for every day on which such contravention occurs or continues or is repeated, incur a fine of not more than twenty dollars and costs; and in default of payment of such fine and costs he may be imprisoned for a term of not more than one month.

37. Any Gold Mining Division Officer may convict upon view of any of the offences punishable under the provisions of this Act, or regulations made under it.

38. The contravention on any day of any of the provisions of this Act, or of any regulation made under it, shall constitute a separate offence and may be punished accordingly.

39. All fees, penalties and fines received under this Act and the costs of all such convictions as shall take place before any magistrate appointed under this Act, shall form part of the Consolidated Revenue Fund of this Province and be accounted for and otherwise dealt with accordingly; and the expenses of carrying this Act into effect in any Gold Mining Division or Gold Mining Divisions, shall be paid by the Governor out of the said Consolidated Revenue Fund.

40. This Act may be known and cited as "The Gold Mining Act."

From the "Canada Gazette," of 16th July, 1864.

DEPARTMENT OF CROWN LANDS,

CROWN DOMAIN BRANCH,

Quebec, 16th July, 1864.

HIS EXCELLENCY THE GOVERNOR GENERAL in Council has been pleased to declare, under section 2, of the Act 27th and 28th Victoria, Chapter 9, intituled: "The Gold Mining Act," the following tracts of country in Lower Canada to be "Gold Mining Divisions" respectively, under the said Act, viz:

A division to be called "the Chaudière Gold Mining Division" to comprise the counties of Megantic, Dorchester, Montmagny, and Beauce, including in the latter the seigniory of Rigaud Vaudreuil, for the purposes of the 30th, 31st and 32nd sections of the said Act, and excluding the Townships of Spaulding, Ditchfield, Clinton and Woburn, attached to the St. Francis Division here-

after mentioned ; Charles Lefebvre de Bellefeuille, Esquire, to be Gold Mining Inspector for this division under the said Act, Office at St. François de la Beauce :—and a Division to be called “the St. Francis Gold Mining Division,” to comprise the counties of Bagot, Drummond, Arthabaska, Shefford, Richmond, Wolfe, Missisquoi, Brome, Stanstead and Compton, and the Townships of Spaulding, Ditchfield, Clinton and Woburn, in the county of Beauce ; James Kempt Gilman, Esquire, to be Gold Mining Inspector for this division, under the said Act, Office at Stanstead.

ANDREW RUSSELL,
Asst. Com. of Crown Lands.

From the “Canada Gazette” of 30th July, 1864.

DEPARTMENT OF CROWN LANDS,

CROWN DOMAIN BRANCH,

Quebec, 30th July, 1864.

HIS EXCELLENCY THE GOVERNOR GENERAL, in Council, has been pleased to add, under section 2, of the Act 27th and 28th Victoria, chapter 9, intituled : “the Gold Mining Act,” the following Townships and parts of Townships, to the limits of the “Chaudière Gold Mining Division,” as erected by Order in Council published in the *Canada Gazette* of the 16th instant, viz : the Townships of Daaquam, Bellechasse, Roux and Mailloux, in the County of Bellechasse, and those parts of the Townships of Armagh and Buckland which are situate in the said County.

ANDREW RUSSELL,
Assist. Com. of Crown Lands.

CAP. IX.

An Act to amend *The Gold Mining Act*, twenty-seventh and twenty-eighth Victoria, chapter nine.

[Assented to 18th September, 1865.]

WHEREAS it is necessary and expedient to amend *The Gold Mining Act*, twenty-seventh and twenty-eighth Victoria, chapter nine: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The proviso contained in clause five of the said Act to the effect "that no license fee shall be exacted for exploring for Gold until the precious metal be discovered," is hereby repealed.

2. The word "two" in sub-section four, of clause thirty-two of the said Act is hereby repealed, and the word "four" substituted therefor.

3. Any complaint or dispute for, or in respect of wages between persons engaged in mining within any Gold Mining Division, or their agents or representatives, and the laborers or servants employed by them, may be heard and determined before the Officer of such division, who may by summons require the attendance of the defendant before him, and upon proof of the service of such summons may, either in the absence or presence of the defendant, determine such complaint in a summary manner, on the oath of any one or more credible witness or witnesses to be sworn before him, and may levy such sum as he may adjudge to be due by such person, or his agent or representative to such laborer or servant, together with the costs of service by warrant of distress and sale of the defendant's goods and chattels.

4. This Act may be known and cited as *The Gold Mining Amendment Act of 1865*.

From the "Canada Gazette" of 23rd September, 1865.

DEPARTMENT OF CROWN LANDS,

CROWN DOMAIN BRANCH,

QUEBEC, 23rd September, 1865.

HIS EXCELLENCY THE GOVERNOR GENERAL in Council has been pleased, under sub-section 4 of section 32 of the Act 27 and 28 Victoria, chapter 9, intituled: "The Gold Mining Act," as amended by section 2 of the Act 29 Victoria, chapter 9, intituled, "The Gold Mining Amendment Act of 1865," to include the Seignior of Rigaud-Vaudreuil in the "Chaudière Gold Mining Division," mentioned in the notice of this Department of 16th July, 1864, for the purposes of the 28th and 29th sections of the said Gold Mining Act, as well as for those referred to in the said notice, and under section 2 of the said Gold Mining Act, to add the Town of Sherbrooke, including the townships of Orford and Ascot, to the St. Francis Gold Mining Division mentioned in said notice.

ANDREW RUSSELL,

Assist. Com. of Crown Lands.

MINERAL LANDS.

DEPARTMENT OF CROWN LANDS,

OTTAWA, 12th March, 1866.

REGULATIONS for the sale of Mineral Lands approved by His Excellency the Governor General in Council.

INFERIOR METALS.

1. That each regular mining tract in unsurveyed territory shall consist of blocks of two hundred or four hundred acres.
2. That the dimensions of each regular mining tract of four hundred acres be forty chains in front by one hundred chains in depth, and smaller tracts, except on lakes and rivers, in the same proportion. The bearings of the outlines to be North and South, and East and West, astronomically.
3. That mining tracts bordering upon lakes and rivers shall have their frontage upon such waters, and shall be subject in all

cases to the public rights in navigable or floatable waters; and that mining tracts so situated, shall have a mean depth of one hundred chains back from such river or lake, (exclusive of road allowance of one chain in width, which shall be reserved along the margin of such river or lake) in conformity with the above mentioned bearings.

4. That mining tracts in unsurveyed territory shall be surveyed by a Provincial Land Surveyor, and connected with some known point in previous surveys (so that the tract may be laid down on the office maps of the territory), at the cost of the applicants, who shall be required to furnish the surveyor's plan, field, notes, and descriptions thereof in accordance with the foregoing regulations, and to the satisfaction of the department.

5. The price shall be one dollar per acre, payable into the Department of Crown Lands at the time of making application.

6. That in surveyed townships, lots presenting indications of minerals, be sold on the above conditions, but at not less than one dollar per acre in any township, and at the same price as the other lands in the township when it is more than one dollar per acre.

7. That mining lands in surveyed townships be sold by the local agents for cash, but all lands in unsurveyed territory shall be sold by the department.

8. The above regulations do not apply to mines of gold and silver.

GOLD AND SILVER.

9. That in selling the lands in the gold mining divisions, the department is to discriminate as far as practicable between purchasers for actual settlement, *bonâ fide*, and those for mining or speculative purposes: selling to the former for the present prices and terms (subject to an increase to \$2 an acre, under the order of 8th August, 1864, when actually worked for gold); and to the latter, for one dollar an acre—cash.

10. That in Letters Patent for lands on the shores of Lakes Superior and Huron, the clause reserving all mines of gold and silver be omitted at the discretion of the Commissioner of Crown Lands.

11. All previous regulations inconsistent with the above are cancelled.

A. CAMPBELL,
Commissioner.

MINERAL LANDS.

DEPARTMENT OF CROWN LANDS,
OTTAWA, 13th July, 1866.

REGULATIONS for the sale of Mineral Lands approved
His Excellency the Governor General in Council.

INFERIOR METALS.

1. That each regular mining tract in unsurveyed territory shall consist of blocks of two hundred or four hundred acres.

2. That the dimensions of each regular mining tract of four hundred acres be forty chains in front by one hundred chains in depth, and smaller tracts, except on lakes and rivers, in the same proportion. The bearings of the outlines to be North and South, and East and West, astronomically, in the unorganized territories in Upper Canada and parallel to the outlines of the townships elsewhere.

3. That mining tracts bordering upon lakes and rivers shall have their frontage upon such waters, and shall be subject in all cases to the public rights in navigable or floatable waters; and that mining tracts, so situated, shall have a mean depth of one hundred chains back from such river or lake, (exclusive of road allowance of one chain in width, which shall be reserved along the margin of such river or lake) in conformity with the abovementioned bearings.

4. That mining tracts in unsurveyed territory shall be surveyed by a Provincial Land Surveyor, and connected with some known point in previous surveys (so that the tract may be laid down on the office maps of the territory,) at the cost of the applicants, who shall be required to furnish with their application the surveyor's plan, field, notes, and descriptions thereof in accordance with the foregoing regulations, and to the satisfaction of the department and pay the price of one dollar per acre, into the Department of Crown Lands at the time of making application.

5. That in surveyed townships, lots presenting indications of minerals, be sold on the above conditions, but at not less than one dollar per acre in any township, and at the same price as the other lands in the township when it is more than one dollar per acre.

6. That mining lands in surveyed townships be sold by the local agents for cash, but all lands in unsurveyed territory shall be sold by the department.

7. The above regulations do not apply to mines of gold and silver.

GOLD AND SILVER.

8. That in selling the lands in the gold mining divisions, the department is to discriminate as far as practicable between purchasers for actual settlement, *bonâ fide*, and those for mining or speculative purposes: selling to the former for the present prices and terms (subject to an increase to \$2 an acre, under the order of 8th August, 1864, when actually worked for gold); and to the latter, for one dollar an acre—cash.

9. That in all Letters Patent for lands, the clause reserving all mines of gold and silver be omitted.

10. All previous regulations inconsistent with the above are cancelled.

A. CAMPBELL,
Commissioner.

CAP LXIV.

An Act respecting Mining Companies.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The proprietors of any mine in Canada may construct a gravel or macadamized road or a tramway from their Mines to the nearest navigable waters or railway or highway, and may take any land required for right of way and stations at a fair valuation, under the provisions of the eleventh section of the Railway Act, in that behalf, headed "Lands and their valuation," which shall apply to such proprietors, but the said gravel or macadamized road or tramway shall not exceed twenty miles in length. 20 V. c. 15, s. 1.

2. The proprietors of any such Mine holding lands in fee simple having a frontage of one mile or upwards on any navigable lake, river or stream, may

1. Construct harbours, wharves, piers, and other erections thereon, at the bank of such lake, stream or river, for the accommodation of all kinds of steamers, vessels and craft :

2. Make rules and regulations for the government and management of such wharves and harbours :

3. Impose and levy according to a tariff to be by them adopted for that purpose, and which may be from time to time altered and amended, reasonable wharfage and harbour dues, and fines for the infraction of such rules and regulations. 20 V. c. 15, s. 2.

3. No such rules, regulations or tariff shall be of any force or effect until sanctioned or approved of by the Governor, and no fine thereby imposed shall exceed twenty dollars for any one offence, and such fines shall be recoverable in a summary way before any two Justices of the Peace, as if imposed by Act of the Legislature. 20 V. c. 15, s. 2.

4. Any Mining Company, or the proprietors of any Mine, may improve and render navigable for the transport of freight to and from the Mine, any water course or water courses, or may construct a channel of communication between navigable water courses, that may be necessary for the full and proper development thereof for the more advantageous working of the Mine and the conveyance of freight to and from the same. 20 V. c. 15, s. 3.

5. But every Mining Company or the proprietors shall be liable to indemnify all or any person or persons who may suffer injury to property or rights in consequence of their so doing, according to the laws of that part of the Province in which the water courses may be respectively. 20 V. c. 15, s. 3.

6. For the purposes aforesaid, the Mining Company, or proprietors of any Mine, may enter into and upon the lands of Her Majesty, or of any person or persons, body corporate or otherwise, for the purposes and subject to the conditions aforesaid, and may survey and take levels of the same or any part thereof, found necessary and proper for the construction of tramways or for making channels of water communication or improving the navigation of any water course or water courses, so as to facilitate the working of such Mine or the conveyance of freight to and from the same. 20 V. c. 15, s. 4.

7. No beach, lot, or land covered with water or other public property, shall be taken under this Act without the consent of the Governor in Council, and then only upon such terms and conditions as he thinks proper. 20 V. c. 15, s. 5.

8. No Harbour or river improvement shall be made under this Act, or any property taken therefor, until the proposed plan and extent thereof, and of the works therewith connected, have been submitted to and approved by the Governor in Council: but such plan may afterwards be altered and extended with such consent and approval. 20 V. c. 15, s. 5.

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